

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 801 OF 2014

Tushar s/o Pandurang Baviskar
Age: 23 years, Occ. Education,
R/o Plot No. 17, Gut No. 60,
Shiva Colony, Jalgaon,
District Jalgaon.

... **Petitioner**

Versus

1. The State of Maharashtra
through its Secretary,
Tribal Development Deptt.,
Mantralaya, Mumbai – 32.
2. The Scheduled Tribe Certificate
Scrutiny Committee, Nandurbar
Region, Nandurbar.

... **Respondents**

**with
WRIT PETITION NO. 8058 OF 2013**

Rohan s/o Ganesh Sonawane,
Age: 26 years, Occ. Student,
R/o Tanaji Malusare road,
Asoda Road, Jalgaon,
Tq. & District Jalgaon.

... **Petitioner**

Versus

1. The State of Maharashtra
through its Secretary,
Tribal Development Deptt.,
Mantralaya, Mumbai – 32.

2. The Scheduled Tribes Certificate
Scrutiny and Verification Committee,
Nandurbar Region, Nandurbar.

... **Respondents**

Mr. S.R. Barlinge, Advocate for the petitioner/s.
Mr. P.S.Patil, AGP for respondent-state.

**CORAM : S.C. DHARMADHIKARI &
MANGESH S. PATIL, JJ.
DATE : 15.06.2017.**

ORAL JUDGMENT :-

. Rule. Rule made returnable forthwith and heard finally with consent of learned advocates for the parties.

2. The petitioners before us are aggrieved and dissatisfied with the orders passed by the Scrutiny Committee.

3. The Scrutiny Committee namely the Scheduled Tribe Certificate Scrutiny Committee, Nandurbar Region, Nandurbar by the impugned orders dated 08.12.2011 and 21.06.2013 refused to grant caste / tribe validity certificates to the petitioners.

4. It is common ground that the petitioners' are residing at Jalgaon. They claim that they belong to 'Tokre Koli Scheduled Tribe'. The Caste / Tribe Certificates were issued by the Competent Authority in

terms of the Maharashtra Scheduled Castes, Scheduled Tribes, De-notified Tribes, (Vimukta Jatis), Nomadic Tribes, Other Backward Classes and Special Backward Category (Regulation of Issuance and Verification of) Caste Certificate Act, 2000 (for short the "Maharashtra Act No. 23 of 2001") on 06.09.2001 and 10.08.2011, respectively.

5. On the strength of this caste certificate, the petitioner in writ petition no. 801/2014, obtained admission in an educational institution namely Kendriya Vidyalaya, Jalgaon. The caste certificate was forwarded for scrutiny and verification by that school to the second-respondent committee. The petitioner complains that the committee took six years to scrutinize and verify the claim and eventually by the impugned order rejected it. The caste certificate of petitioner in writ petition no. 8058/2013 was referred for scrutiny and verification of the claim for election purpose by the Tahsildar, Jalgaon to the second-respondent committee and the same was also rejected.

6. In assailing the orders, Mr. Barlinge, advocate appearing for the petitioners would submit that, there was no need for detailed scrutiny and verification. There were documents which would show that within the family, the claims have been accepted and certificates of validity were

issued to the petitioners close relatives from the paternal side. The law is clear in the sense that, if such certificates of validity, granted by the duly authorized scrutiny committee are brought to the notice of the tribe scrutiny committee in the present proceedings, then, they are strong proof or evidence, they can be relied upon to grant a caste / tribe validity certificate, unless there is a proof of a fraud or misrepresentation. Mr. Barlinge, submits that it is not enough to ignore these certificates of validity on the ground that when they were granted, detailed scrutiny and verification was not done. The sweeping observation that, the merits of the claim were never considered is invariably made in such orders. For the criticism of Mr. Barlinge is to be considered, he would submit that in the present case, the certificate of validity issued to one relative from the paternal side was upheld by this Court. Once it was upheld by this Court, then, there was no warrant for discarding or brushing aside the same. The committee's order, therefore, is perverse and vitiated by total non-application of mind.

7. On the earlier occasion, when these matters were argued, this Court noticed that, if certificates of validity were issued to close relatives from the paternal side and certified / true copies of the same are produced, then, it would be better if the original record is brought

before this Court and for its perusal.

8. Mr. Patil, appearing on behalf of the state and scrutiny committee, produces the record for our perusal. He would also submit that the committee has been influenced to a great extent by certain judgments of this Court and observations made therein, to the effect that every case has to be decided on its own merits. Therefore, the scrutiny and verification cannot be dispensed with merely because such certificates are produced. Mr. Patil, therefore, would support the conclusion of the committee.

9. With the assistance of both advocates, we have perused the petition and its annexures, as also the original records. The petitioner produced as many as twenty documents. They inter alia included certified true copies of validity certificates issued by Nashik Committee to one Suyog Pandurang Baviskar. An affidavit was also filed by said Suyog and establishing the relationship with the petitioner-applicant. Then, a certificate of validity issued to one Pandurang Damu Baviskar, father of the petitioner in writ petition no. 801/2014 was also produced.

10. The scrutiny committee, however, held that when the leading judgment in the case of **Madhuri Patil V/s. Additional Commissioner**

and Ors. reported in **AIR 1995 SC 894**, was brought to its notice and equally the Maharashtra Act No. 23 of 2001 and the rules made thereunder, then, on the strength of the father's validity certificate, the petitioners cannot succeed. The committee went about forwarding the documents to the Vigilance Cell, for a vigilance inquiry, however, it forgot and overlooked that such vigilance inquiry was conducted by the Vigilance Cell of Nashik Committee in the case of (Suyog writ petition no. 801/2014). The findings of the vigilance inquiry are referred. The committee, however, conveniently takes up one entry in the records of Pandurang, namely the school record and says that he was admitted in the School on 08.07.1972 but his caste was recorded as 'Hindu Suryavanshi Koli'. It is in these circumstances, that the committee found that even Pandurang has not obtained the certificate of validity, after a thorough and proper scrutiny, that is why the committee feels that it is justified in then asking the petitioner writ petition no. 801/2014 to prove his affinity and connection with the Scheduled Tribe. This is how the committee took about six years. The committee framed about four points and held that the petitioner-applicant has failed to prove any documentary evidence. Secondly, he has failed to clear the affinity test. Thirdly, he has failed to establish and prove his status as a Scheduled Tribe. The important point no.4 was whether certificate of validity issued

to petitioner's father and brother precludes the committee from deciding the petitioner's claim on merit. That the committee says, it is not precluded and, therefore, answers this point as well in the negative.

11. The reasons as far as point nos. 1 and 4 are that the petitioner's father, though, having filed an explanation in writing and stated that some time because of the illiteracy of the senior family members, the entries could have been recorded in his school record as above but that by itself is not decisive. The committee instead of considering whether this admission is legal, valid and conclusive, not only relied upon it but recorded that the petitioner's father has managed to record the caste of the petitioner in his school record as 'Tokare Koli', with a view to grab concessions meant for 'Tokare Koli Scheduled Tribe'. The committee forgot that not only the father but the petitioner's brother also possess a validity proof. That is why, it knew that it would have to demolish the claims of these relatives as well. That is how it went about referring to the affinity test. The justification for going into the affinity test and its result has to be found in the reasons on point no.4. The committee found that the first page of the service book of the petitioner's father carries an entry in the caste column as 'Hindu Tokare Koli', then, it remarks that earlier caste entry was 'Hindu Koli', but subsequently 'Hindu

Tokare Koli' was also written besides this entry. No correction is made in the first entry. From this entry it can be concluded that the petitioner's father has rightly recorded his caste as 'Hindu Koli'. The earlier committees have issued validity certificate to the petitioner's father and brother but by neglecting these entries. Then, the affidavit of petitioner's father dated 02.07.2005 is referred and the explanation therein that such entries are made due to illiteracy of the parents. That ground and explanation is rejected by picking up one paragraph from **Madhuri Patil (supra)**. The father also gave other reasons and which are rejected. These reasons are re-produced by the committee in the impugned order in its discussion on point no.4 at running page 40 of the paper book. The committee, then, holds that the petitioner's father has relied upon the certificates of blood relatives but still it will have to decide each and every case on its merits.

12. This Court has repeatedly held that such approach of the committees would result in utter chaos, the result is for all to see. A Committee at Nashik accepts the father's claim and issues him certificate of validity. The committee at Nandurbar finds fault necessarily with the claim of the father but the committee at Nashik does not. However, Nandurbar Committee thinks that it has an appellate power or a power

by which it can discard the certificates of validity issued by the Nashik committee. It goes behind the order of the Nashik committee and holds that the committee did not consider the claim on merits. That is why we called for the original record and proceedings.

13. We found that in the case of Suyog Pandurang Baviskar, the Scrutiny Committee at Nashik verified and scrutinized Suyog's claim as belonging to 'Tokare Koli Scheduled Tribe'. Pertinently, Suyog is the real brother of the petitioner in writ petition no. 801/2014. The scrutiny committee at Nashik holds that a police inquiry has been conducted in the matter and the vigilance cell submitted its report to the scrutiny committee mentioning that the Tribe claim of Suyog's uncle from the paternal side Pratap-Waman Baviskar, is upheld by the Commissioner, Nashik Division, Nashik in Appeal no. 58 of 1992, as well as, by this Court in Writ Petition No. 1703 of 1993. The tribe claim of Pratap's children Shailendra and Chitra have also been validated by the scrutiny committee. While it is true that those were some of the relatives from the maternal side but Suyog's claim was not decided exclusively by relying on these certificates of validity issued to the relatives from maternal side. The Scrutiny Committee at Nashik had before it an affidavit of another relative and within that family, it may be that the

Scrutiny Committee at Nashik comes to a conclusion that these are near relatives. It may have missed the point that the relatives are from maternal side but that by itself without anything more does not mean that it failed to scrutinize Suyog's claim on merits. If one finds that police inquiry was conducted in the matter and vigilance cell submitted the report to the Scrutiny Committee while scrutinizing and verifying Suyog's claim, then, that is a detailed order and contains reasons.

14. We do not think, how the committee in the impugned order and sitting at Nandurbar comes to a conclusion that Suyog obtained the certificate of validity from the Nashik Scrutiny Committee without any adjudication of his claim on merits.

15. We are left with such reasoning of the committee, which tempts us to observe that when certificates of validity are produced of his real brother and granted to his father, the committee cannot start with the presumption of dishonesty, fraud and equally misrepresentation. The presumption ought to be otherwise. These are valid and substantial piece of evidence and for them to be discarded, there has to be a established fraud.

16. In the present order, the Nandurbar scrutiny committee holds

that ratio of the validity certificates granted to the father and brother cannot be relied upon by the petitioner. That is because, though, his father and brother have obtained such certificates of validity, the father failed to prove his socio-cultural affinity test with 'Tokare Koli Scheduled Tribe'. It is in these circumstances, that the committee feels that the judgment of this Court in the case of **Muktai Gulab Deoraj V/s. State of Maharashtra and Ors.**, in **Writ Petition 8776/2010** would clinch the issue. The committee erred in that case according to the Division Bench in granting a certificate of validity in favour of the father of Muktai, ignoring the vital documentary evidence showing caste of petitioner's father 'Suryavanshi Koli' and grandfather's caste as 'Koli'. Therefore, when this Court passed an order and through its various Benches in about 10 or 12 cases relying upon the entries 'Hindu Koli', that does not mean that the entire community or members of this community / tribe have derived benefits and concessions wrongfully and fraudulently. That the whole community or tribe, therefore, is not what it projects itself to be but a forward caste or tribe. We do not think how some orders of this Court can lead to a general presumption. That has coloured completely the conclusion of the committee in the impugned order.

17. Not a word is there about any fraud or misrepresentation.

There is only reference to some general observations in this Court's various judgments and on the strength of the same, the claim of the petitioner is denied. Pertinently, the Nashik Committee having gone through the claim on merits may have erred in making some observations. That does not mean a fraud was perpetrated by the family, namely the petitioner's father, his real brother on scrutiny committees and the general public. Something more was required to be brought on record. In the instant case, we do not find that there was enough material to discard and brush aside these certificates of validity. Pertinently, the petitioner's father and his brother are issued a certificate of validity. Hence, no reliance could have been placed on the orders, of this Court in the case of **Govind Ratan Saindane** and **Rupali Uttam Saindane**. There may be some relatives of the present petitioners from maternal side, who have obtained the benefit, however, we are not going by those certificates but we are referring to the reasoning in the present order and impugned before us, which ignores and completely brushes aside the certificates of validity issued to the petitioner's brother and father. The original records have been called only with a view to ascertain the correctness of the factual submission. That submission was that certificates of validity were issued to Suyog and the petitioner's father, after a thorough scrutiny and verification. We do not think that

the reliance on Suyog's order and the proceedings before the Nashik Committee was, therefore, not well placed. We find that this reliance is quite apposite.

18. In the result, we cannot sustain the impugned order, it is vitiated by total non application of mind and perversity, in the sense it ignores and brushes aside reliable and valid piece of evidence.

19. Before parting with the orders, we wish to observe that there is an increasing tendency and a pattern which emerges from the committee's orders and impugned before us. The committees in the cases of 'Tokare Koli Scheduled Tribe' and 'Koli Mahadev Scheduled Tribe' have on most occasions prejudged the issues before them. They have started with the presumption that the claims of the applicant's before them and towards these tribes are patently fraudulent or dishonest and cannot be accepted. The general rule is of denial of certificates of validity. In the process, these committees have created total confusion and utter chaos. If one member of the family and a close relative from the paternal side has obtained the certificate of validity, say for example and in the instant case at Nashik, from the Nashik Scrutiny Committee, promptly, the Nandurbar Scrutiny Committee feels it obliged to discard it.

That it has made some discovery and has some documentary evidence is enough for it to ignore the certificate of validity granted by a Competent Scrutiny Committee.

20. The committees ought to be aware that they are not discarding some documents or documentary piece of evidence relied by parties. By the above approach, they are doubting the genuineness and sanctity of the proceedings before another Scrutiny Committee. That is a disturbing trend. If you start doubting your own colleagues and brother members of the Scrutiny Committee, then, possibly the whole edifice as is sought to be built by the Act No. 23 of 2001 will collapse, rather it has already collapsed. If this trend increases, then, we would not hesitate to wind up and dissolve such committees in writ jurisdiction for we cannot remain a silent spectator to such chaos and confusion. Our time is indeed very precious. The deserving litigants and cases have to wait only because this Court on the eve of school and college admissions, employment drives and elections is flooded with petitions challenging rejection of certificates of validity by scrutiny committees, even though the documentary evidence of the above nature is produced before them. Now another trend has emerged and that is not only a certificate of validity is refused but even the caste / tribe certificate is not issued.

Such orders are invariably upheld by the scrutiny committees resulting in additional litigation before this Court.

21. We do not think that Act No. 23 of 2001 if implemented and enforced in this manner works for the benefit and upliftment of Scheduled Tribe and Scheduled Castes.

22. We feel that such acts are enacted so as to end casteism and untouchability and bring about equality. Some day there would be no need for an Act like this or a Scrutiny Committee or a caste certificate itself, however, that hope is belied because though the number of tribals taking education, employment, proceeding to contest elections is increasing, still once they are denied these benefits and concessions meant for them, they would be discouraged and thrown back to centuries. Their plight is sought to be improved by measures taken by a welfare State, however, they are pushed back if the tribe certificates are routinely denied to them as their plight is worse than the Scheduled Castes.

23. In such circumstances, one more order of this nature and by the Nandurbar Committee would enable us to take away all matters pending before it and forward them to some other Scrutiny Committee,

although, that might entail some loss to the litigants and applicants. We however will not hesitate to do it. Secondly, we will also not hesitate to pass an order of removal of such of these scrutiny members, who routinely indulge in these acts. We issue a warning to them that hereafter such an approach will attract penalties as well.

24. We refrain from imposing personal costs on these Members who have passed the impugned orders only because they may have ceased to be Members by now and Mr. Patil was fair and reasonable in his approach. He did not defend their actions beyond a point. However, even that course is open for us and we wish to remind all concerned.

25. The writ petitions are allowed. The impugned orders are quashed and set aside. The certificates of validity shall be issued to the petitioners within a period of (2) two weeks from the date of receipt of a copy of this order, failing which the officials of the Scrutiny Committee will have to pay personal costs quantified at Rupees Fifty Thousand (Rs. 50,000/-) each. Rule is made absolute accordingly.

[MANGESH S. PATIL, J.]

[S.C. DHARMADHIKARI, J.]